TRANSPORTATION COOPERATIVE AGREEMENT

CLALLAM TRANSIT SYSTEM
QUILLAYUTE VALLEY SCHOOL DISTRICT NO. 402
2017-2018

Pursuant to RCW 28.A.58.107 and pursuant to RCW 39.34.030 and .080, Quillayute Valley School District No. 402 (hereinafter referred to as QVSD) and the Clallam County Public Transportation Benefit Area, Clallam Transit System (hereinafter referred to as CTS) agree as follows:

WHEREAS, the parties hereto desire to enter into this contract for their mutual benefit and hereby acknowledge that the mutual promises contained herein constitute good and valuable consideration, this contract, made and entered into this **1st** of **September, 2017**, between the above-named parties.

WITNESSETH:

CTS provides public transportation services in Clallam County by bus and other motor vehicles and equipment and desires to contract with QVSD for the use of its Pupil Transportation Center (herein referred to as the PTC) to include the maintenance, service, and repair of its vehicles and equipment.

QVSD maintains, services, and repairs buses and other motor vehicles at its PTC facility located at Highway 101 and Johnson Road, Forks, Washington, and desires to contract with CTS to provide such services and use of facilities to CTS, and

CTS and QVSD agree that the PTC facility shall provide space and supervision to the CTS for preventive and mechanical maintenance and repair for all CTS vehicles. Parking accommodations and storage for seven units of the CTS fleet shall be provided. Additional vehicles and equipment may be added by CTS as determined by their General Manager/designee and negotiated with the QVSD Superintendent/designee during the course of the contract.

All of the above shall be provided in accordance with the terms as set forth herein.

SECTION I Preventive Maintenance, Mechanical Maintenance, Repairs and General Service

The PTC facility will provide routine preventative maintenance and repair of engines, drive trains, mechanical parts, and accessories according to the rates as established in Section VI of this contract. Examples of services and repairs available by the PTC will include the following:

A. Maintenance and repair of all vehicles to include:
    1. Standard lubrication, oil changes and other fluids as needed
    2. Complete Safety inspection
    3. Complete brake repairs and rebuild
    4. Complete electrical system repair
    5. Compete exhaust work
    6. Complete engine work rebuild of heads, block boring, alternators, starters, air compressors, etc. (outsourced by CTS/PTC)

7. Transmission, drive train and rear-end work (outsourced by CTS/PTC)
8. Compete front-end and steering work (outsourced by CTS/PTC)
9. Interior work (outsourced by CTS/PTC)
10. Body, fender, and painting (outsourced by CTS/PTC)
11. Tire purchase, repair, and other work as per tire contract services
12. Emergency road service for breakdowns-covered by PTC (outsourced when needed-CTS/PTC Supervisors coordinate)
13. Full service check for each vehicle to include:
    (1) Lubrication
    (2) Brake check
    (3) Exhaust system check
    (4) Transmission and rear-end
    (5) Front-end and steering check
    (6) Tire check

B. CTS shall determine its vehicle maintenance schedule and will ensure that CTS vehicles are made available for service at the PTC facility on dates and times which shall be mutually agreed upon and coordinated by the CTS designee and the PTC Shop Foreman. CTS will provide copies of all available shop manuals and vehicle maintenance records if requested by the PTC Shop Foreman.

C. The CTS Maintenance Manager shall assign a designee contact responsible for coordinating with the PTC Shop Foreman for scheduling and delivery of vehicles to the PTC facility. All vehicle outsourcing will be authorized and coordinated through CTS following consultation between the PTC Shop Foreman and the CTS General Manager/designee.

D. CTS will provide, at its expense, personnel necessary for cleaning and washing of transit units at the PTC facility. The PTC will furnish water and hose equipment to the CTS and the CTS will provide its own cleaning supplies. Detail service can be made available if and when requested by the CTS designee and would be charged at the appropriate hourly rate.

E. The PTC will keep a complete on-line record of service for each CTS vehicle. The PTC warrants and guarantees that all work performed by it, its agents and employees, will be performed in a timely manner, of good quality and workmanship, and free of any and all negligent workmanship for up to one year. This warranty shall apply only to identifiable poor workmanship and not to parts or materials used in repairs.

SECTION II PTC Emergency Service and Assistance for Disabled Vehicles

A. The PTC will provide a service vehicle, equipment, and manpower to respond to emergency calls for any CTS vehicle identified by the CTS designee and being serviced under this contract that is disabled in the field subject to availability.

B. CTS vehicles will receive equal response for emergency calls, to include (outsourced) towing when necessary, with other vehicles in the PTC facility partnership fleet. Such services will be available from 8:00 a.m. to 5:00 p.m. during school day operations. During non-school day operations, normal PTC workday shop hours will be from 7:00 a.m. to 4:00 p.m. CTS shall receive comparable service as provided by the PTC to its own vehicle fleet. In the event that the PTC is unable to respond to a CTS emergency call, the PTC Shop Foreman will coordinate with CTS to outsource a

reliable alternative service at the request of the CTS designee. If CTS is unable to reach the PTC in the event of an emergency call (disabled vehicle), CTS will secure such emergency services on its own from the nearest reliable alternative service.

C. The PTC shall extend priority service to CTS in performance of all work under this agreement to the extent that such service does not adversely affect work and service to be performed by the PTC for or on behalf of other school districts and agency partners who are members of the PTC. The PTC Shop Foreman reserves the right to re-prioritize service in the performance of all work under this agreement to the extent that such priority places safety of all member vehicles as the single foremost issue. Such priority service is not meant to adversely affect work and service performed by the PTC, but is intended to emphasize safety as the top priority.

D. Emergency service calls will be billed at the rates specified in Section VI.

SECTION III Use of PTC Facilities

A. QVSD hereby grants and allows the CTS scheduled joint usage of the PTC facilities for the accommodation of space to include a waiting area, employee lounge, access to local phones and restrooms.

B. QVSD shall provide vehicle-parking area for at least seven (7) official CTS vehicles that shall be a reasonable, safe and secure storage of CTS vehicles. Parking will be assigned by the PTC Shop Foreman as determined by the number of partner vehicles needing space. Personal vehicles will be accommodated as a secondary priority when space is available.

C. QVSD shall allow the CTS to use the vehicle cleaning area (1 stall at a time) of the PTC facility in order for the CTS to perform, with its own employees, exterior and interior cleaning, maintenance of fire extinguishers and first aid equipment.

D. The PTC will provide block heaters upon request, installation costs and monthly PUD charges are the responsibility of CTS. Refer to Section VI for rate formula.

SECTION IV Requested Improvements and Modifications to the PTC Maintenance Garage and Facilities by CTS

A. QVSD and CTS recognize that at times it may be necessary and appropriate for modifications and improvements to be made at the PTC facility in order to accommodate CTS or joint usage needs. An example might be additional secure covered storage area added for the benefit of CTS vehicles/personnel.

B. In the event that an improvement or modification is made to the PTC facility solely for the benefit of the CTS, such improvements or modifications shall be made at the expense of CTS; provided that any such improvements are mutually agreed to in writing in advance of making an expenditure.

C. In the event that an improvement or modification to the structure of the PTC facility is made to accommodate CTS and shall benefit QVSD, an appropriate distribution of

expenses shall be determined and negotiated by CTS and QVSD; provided that any such improvements are mutually agreed to in writing in advance of making an expenditure.

D. No personal or real property shall be commonly owned in any form or manner by the parties hereto by reason of this agreement and no provision for disposal of any common property is necessary.

SECTION V Consideration of CTS Services to the PTC

A. CTS, as may be mutually agreed to, shall provide certain administrative and information system services to the PTC. Such services may include vehicle maintenance records; recall notices, vehicle manuals, inventory/purchasing records and any vehicle operating data analysis appropriate to maintaining CTS vehicles.

B. Such services may be extended to QVSD when needed by the PTC Shop Foreman for CTS record keeping purposes. Maintenance record updates will also be provided by the PTC Shop Foreman to the CTS designee upon request.

C. Costs for requested additional data services over and above traditional associated services will be negotiated between the parties.

D. CTS shall, as it is able to do so and upon written request by the PTC Transportation Director/Shop Foreman, provide transportation/emergency breakdown services to PTC participating partners for the supplemental benefit of pupil transportation services/public transportation within the Clallam Public Transportation Benefit Area at the cost of such service. Such service shall be provided by the consent of the General Manager/CTS Board.

SECTION VI Rates, Charges and Billings

The CTS will be billed monthly for facility space, shop time, vehicle repair, maintenance and additional requested services. The invoice will be based on:

A. **Basic unit Contract Rate:** CTS shall pay QVSD the sum of **$1,123.44** per month as a facility charge for its share of the cost of space and overhead in the PTC facility as set forth in this contract and the annual proposed co-op billing spreadsheet.

B. **Shop Rate for Service:** An hourly shop rate of **$54.66** for mechanic/shop foreman's time and **$48.69** for the mechanic/serviceman's time.

C. **Rate for Clerical Services:** An hourly rate of **$36.63** for transportation clerical time.

D. **Overtime:** Emergency overtime, work done before 8:00 a.m. and after 5:00 p.m. during the school year and work done before 7 a.m. and after 4 p.m. during the non-school year and all holidays and weekends, will be billed at **$71.39** per hour for vehicle mechanic/shop foreman, **$63.30** for mechanic/serviceman. A 2 hour minimum will be charged for after hour call outs and **$48.16** per hour for clerical.

E. **Calls for Emergency Services:** Will be charged at the normal hourly rate, overtime will be charged for required extended coverage and assistance as per paragraph C above. Shop truck mileage will be billed at **$0.985** per mile, shop car **$0.585** per mile for all service calls.

F. **Handling Fee:** A ten percent (10%) shop handling fee (up to, but not exceeding $20.00) will be assessed on all billings for each purchased part.

G. **Block Heaters:** A 1500 watt engine block heater used 12 hours per day will be billed using the following formula:

1500 watts x 12 hours = 18,000 watts/divide by 1,000 = 18kwh*
18kwh x 30 days per month = 540kwh
540kwh x $.0694 (current rate) per kwh = $37.48 per month
*(kwh – Kilowatt Hour)

Block heater installations are at CTS expense if PTC resource is not available.

H. **Grease and Lubricant:** Will be billed at $3.00 per full service inspection Section I Paragraph (A) 13 and $1.50 for standard service Section I Paragraph (A) 1.

I. **Billings:** QVSD shall deliver to CTS at the end of each month itemized invoices showing all work performed (including the total number of hours by category, shop rate, overtime, and emergency services), parts provided to or installed upon each vehicle and the amounts owing by the CTS to the QVSD for each item. CTS shall make payment by warrant during the following month in its normal course of business following approval of all vouchers and invoices by the CTS board.

J. **Guarantees:** The QVSD guarantees, following CTS board approval, the rates specified in Section VI of this contract beginning **September 1, 2017,** until **August 31, 2018**. After that date, any rates and charges for services shall be negotiated and presented by QVSD to the CTS board for approval.

SECTION VII Liability, Insurance and Hold Harmless Agreement

A. CTS agrees to save and hold QVSD harmless from and defend QVSD against any claims for personal injuries or property damage to either CTS, its employees, or third party persons, whatsoever, arising out of or connected with the operation by CTS employees and CTS contractors working at or performing services at the PTC facility, except claims for damages or personal injuries caused or attributed to negligence on the part of QVSD or its employees in the performance of its function under the terms of this agreement.

B. QVSD agrees to save and hold the CTS harmless from and defend CTS against any claims for personal injuries or property damage to the PTC facility, its employees, or third persons, whatsoever, arising out of or connected with the operation of the PTC and PTC contractors working at or performing services at the PTC facility, except claims for damages or personal injuries caused or attributed to negligence on the part of the CTS or its employees.

C. QVSD shall not be held liable for damage caused by vandalism, theft, or accidental damage caused to any CTS property when:

1. The vehicles are in the care and custody of CTS personnel whether on or off the PTC premises.
2. The vehicles are parked after normal working shifts of the PTC garage personnel (i.e. after closing of evening shift until beginning of the day shift).

D. CTS and QVSD acknowledge that each entity provides its own insurance coverage. The parties further agree that when a claim arises, they will work with their respective agencies/adjusters to determine 1st and 2nd position of coverage. CTS will provide evidence of coverage to QVSD from their insurance/risk management agency or private insurer and such coverage should name the QVSD as an additional insured, if CTS is privately insured, for activities related to the PTC operations.

E. QVSD shall retain and keep in force during the full term of this agreement the following state requirements and self insurance coverage:

1. Worker's Compensation Insurance in compliance with the laws of the State of Washington covering all employees who work for the PTC facility under this agreement.

2. Evidence of coverage for General Liability to include Bodily Injury/Property Damage and Personal Injury/Advertising Injury for minimum limits of:

Bodily Injury/Property Damage	$1,000,000
Personal Injury/Advertising Injury	$1,000,000
Automobile Liability per Accident	$1,000,000

3. A letter of Evidence of Coverage shall be provided by each entity to the other within two (2) months following the execution of this agreement evidencing proofs of coverage in accordance with contract.

CTS and QVSD insurers shall agree to provide a 30-day written notice of cancellation or substantial change in coverage.

SECTION VIII Termination, Re-negotiation or Continuation of Terms

A. This contract may be terminated at any time by either party upon the service of notice of intent to terminate not later than 120 days prior to the desired date of termination.

B. The terms and conditions of this contract may be renegotiated from time-to-time, provided that both parties mutually agree to a re-opening of the agreement.

C. The terms and conditions of this contract, if neither party terminates or renegotiates this contract, shall run on a continuing basis following the expiration date of this contract until a new contract is adopted.

D. Review of this agreement shall occur annually following its execution to determine if any modifications, alterations, or the like are needed. The QVSD Superintendent/ designee and the CTS General Manager/designee shall participate in the review.

SECTION IX Contract Administration

A. **Separate Entity:** A separate entity is created by reason of this agreement solely for the performance of the functions set forth in the agreement to be administered as set forth in the agreement. Otherwise all parties shall retain their previously existing organization and composition.

B. **Financing and Budget:** Each party shall be solely responsible for its own budget and arrangements for financing performance of this agreement. No joint financing or budget is required by the agreement, except as set forth in this agreement.

C. **Administration:** This agreement, subject always to the approval and direction of the board or council of each of the parties, shall be administered by the following persons acting on behalf of each party:

QVSD	CTS
Superintendent/Designee	General Manager/Designee

No joint board or single administrator is necessary to administer this agreement or the performance thereof.

D. **Filing of Agreement:** Prior to the effective date of this agreement, a signed original copy of this agreement will be duly filed with each respective body.

E. **Severability:** If any provision of this agreement is held invalid or unenforceable for any reason, the remainder of this agreement shall not be affected thereby, but shall continue in full force and effect.

F. **Effect:** This agreement shall be binding upon the parties, their heirs, successors, and assigns.

G. **Applicable Law – Venue:** This agreement shall be governed by the laws of the State of Washington. Venue for any action hereunder shall be in Clallam County, Washington.

H. **Term:** The term of this contract shall be from the date executed by the parties through August 31, 2017, and renewed thereafter as noted within Section VIII, Paragraphs A. thru D. herein.

8 McDowell 10/3/2017

SECTION X (See Attached Federally Required Contract Clauses for Maintenance Subrecipients)

SECTION XI Execution

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first written above.

Quillayute Valley School District No. 402, by

Diana Reaume, Superintendent

8-8-17

Date

Clallam Transit System, by

Kevin Gallacci, General Manager

8-29-17

Date

FEDERALLY REQUIRED CONTRACT CLAUSES FOR MAINTENANCE SUBRECIPIENTS

No Government Obligation to Third Parties

A. Owner and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to Owner, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq., and U.S. DOT regulations, Program Fraud Civil Remedies, 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certified or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18 U.S.C. § 5307(n)(1) on the Contractor, to the extent the federal government deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who shall be subject to the provisions.

Access to Records and Reports

Where any Purchaser which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this

contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

Contractor/Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA Master Agreement (19) dated October 1, 2012, as identified at the website http://www.fta.dot.gov/documents/19-Master.doc) between Owner and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to do comply shall constitute a material breach of this contract.

Civil Rights Requirements

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Nondiscrimination

A. OWNER IS AN EQUAL OPPORTUNITY EMPLOYER

B. NONDISCRIMINATION IN EMPLOYMENT. In the performance of this Contract Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical disability; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular work involved. Contractor shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeships. Contractor shall take such action with respect to this Contract as may be required to ensure full compliance with Chapter 49.60 Revised Code of Washington, Law Against Discrimination.

C. NONDISCRIMINATION IN SERVICES. Contractor will not discriminate against any recipient of any services or benefits provided for in this Contract on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical disability.

D. If any assignment and/or subcontracting has been authorized by Owner, said assignment or subcontract shall include appropriate safeguards against discrimination. Contractor shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein and further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

Title VI compliance

During the performance of this contract, Contractor, for itself, its assignees and successors in interest agrees as follows:

A. COMPLIANCE WITH REGULATIONS: Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, CFR, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

B. NONDISCRIMINATION: Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the

discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

C. SOLICITATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT: In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Contractor of Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

D. INFORMATION AND REPORTS: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Owner or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to Owner, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

E. SANCTIONS FOR NONCOMPLIANCE: In the event of Contractor's noncompliance with the nondiscrimination provisions of the contract, Owner shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

(1) Withholding of payments to Contractor under the contract until Contractor complies, and/or

(2) Cancellation, termination or suspension of the contract, in whole or in part.

The Contractor shall include the provisions of subparagraphs (A) through (F) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurements as Owner or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction Contractor may request Owner to enter into such litigation with all legal costs to be paid by Contractor to protect the interest of Owner, and, in addition, Contractor may request the United States to enter into such litigation with all legal costs to be paid by Contractor to protect the interests of the United States.

Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated Feb. 15, 2011 (rev 3), are hereby incorporated by reference as identified at the website http://www.fta.dot.gov/documents/FTA_Circular_4220_1F_Third_Party_Contracting_Guidance_2-15-11_-_Rev.pdf.

Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any Owner requests, which would cause Owner to be in violation of the FTA terms and conditions.

Not every requirement within FTA Circular 4220.1F and the attached CERTIFICATIONS will apply to every Contract. The nature of the Contract and the section of the statute or clause will determine which requirements apply. Requirements which do not apply will not be enforced. All Certifications, which are applicable, are to be signed and returned to Owner with signed Contract and made a part thereof.

Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Termination (>$10K)

A. Termination for Convenience Owner may terminate this contract, in whole or in part, at any time by written notice to the Builder when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Owner to be paid the Contractor. If the Contractor has any property in its possession belonging to Owner, the Contractor will account for the same, and dispose of it in the manner Owner directs.

B. Waiver of Remedies for any Breach: In the event that Owner elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Owner shall not limit Owner's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

C. Termination for Default (Construction): If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Owner may terminate this contract for default. Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Owner may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Owner resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Owner in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The Contractor, within [10] ten days from the beginning of any delay, notifies Owner in writing of the causes of delay. If in the judgment of Owner, the delay is excusable, the time for completing the work shall be extended. The judgment of Owner shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Owner.

D. Opportunity to Cure: Owner, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Owner's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor or written notice from Owner setting forth the nature of said breach or default, Owner shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Owner from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Government-Wide Debarment and Suspension (>$25K)

The Contractor, including any of its officers or holders of a controlling interest, is obligated to inform the Owner whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should the Contractor be included on such a list during the performance of this project, it shall so inform the Owner.

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 2%. A separate contract goal has not been established for this procurement.

b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as {insert agency name} deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. The successful Proposer will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from Owner. In addition, is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. **(PROMPT PAYMENT)**

e. The Contractor must promptly notify Owner whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Owner.

E. Americans with Disabilities Act

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA, 42 USC §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; section 16 of the Federal

Transit Act, as amended, 49 USC app. § 1612; and the following regulations and any amendments

(1) U.S. DOT regulations, "Americans with Disabilities Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38, and;

(2) Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," CFR Part 1630;